

1992

Anna Lee Anderson v. Dean Witter Reynolds Inc., Raloh Pahnke : Petition for Writ of Certiorari

Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

ANNA LEE ANDERSON,	:	
	:	
Plaintiff and Appellant,	:	Cert. No. <u>930021</u>
	:	
v.	:	
	:	
DEAN WITTER REYNOLDS, INC.,	:	
a foreign corporation,	:	Priority No. 16
RALPH PAHNKE and	:	
JOHN DOES 1 THROUGH 25,	:	
	:	Court of Appeals
Defendants, Appellees	:	Case No. 920228-CA
and Petitioners.	:	

PETITION FOR A WRIT OF CERTIORARI
TO REVIEW DECISION OF THE UTAH COURT OF APPEALS

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Plaintiff and Appellant

FILED

JAN 13 1993

CLERK SUPREME COURT,
UTAH

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Plaintiff and Appellant

PARTIES TO THE PROCEEDING IN THE DISTRICT COURT

1. David M. Dudley, Trustee of the Norman Anderson Trust.
2. Dean Witter Reynolds, Inc.
3. Ralph Pahnke.

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

1. Anna Lee Anderson.
2. Dean Witter Reynolds, Inc.
3. Ralph Pahnke.

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200 Utah Adv. Rep. 65 (Utah App.
November 13, 1992)
- B Order Denying Petition for Rehearing
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- E Notice of Appeal

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IN THE SUPREME COURT OF THE STATE OF UTAH

ANNA LEE ANDERSON,	:	
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JOHN DOES 1 THROUGH 25,	:	
	:	Court of Appeals
Defendants, Appellees	:	Case No. 920228-CA
and Petitioners.	:	

Dean Witter Reynolds, Inc. and Ralph Pahnke petition the Supreme Court to issue a writ of certiorari and review a decision of the Utah Court of Appeals.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. May a plaintiff who voluntarily withdraws from an action and allows the substitution of a new plaintiff, appeal the dismissal of the action?

2. Is a trust beneficiary the proper party to commence an action against third parties for collection of trust assets allegedly distributed improperly from the trust, when there is no allegation the trustee has been asked to bring the action and has refused or when there is no allegation the interests of the trustee are hostile to the beneficiary?

OPINION OF THE UTAH COURT OF APPEALS

The opinion of the Utah Court of Appeals is reported at Anderson v. Dean Witter Reynolds, Inc., 200 Utah Adv. Rep. 65 (Utah App. November 13, 1992). A copy is included in Appendix A.

STATEMENT OF JURISDICTION

(a) Petitioners seek review of the decision entered November 13, 1992 by the Utah Court of Appeals.

(b) The Court of Appeals denied the Petition for Rehearing in an Order entered December 14, 1992.

(c) The Supreme Court has jurisdiction pursuant to Utah Code Ann. §§ 78-2-2 and -2a-4 (Rep. Vol. 1992).

LAW DETERMINATIVE OF APPEAL

There are no specific constitutional provisions, statutes, ordinances or regulations whose interpretation is determinative of this appeal.

STATEMENT OF THE CASE

The Nature of the Case

This is an action for collection of trust assets.

The Course of Proceedings

Anna Lee Anderson filed her complaint on December 6, 1990, in the Third Judicial District Court for Salt Lake County, Utah. On April 15, 1991, defendants Dean Witter Reynolds, Inc. and Ralph Pahnke filed a motion to dismiss the complaint.

On July 22, 1991, an amended complaint was filed by David M. Dudley, a newly substituted plaintiff. Dean Witter and Ralph Pahnke moved to dismiss the amended complaint.

The district court granted both motions to dismiss. The original complaint was dismissed on September 16, 1991; the amended complaint was dismissed on September 27, 1991.

On October 9, 1991 Anna Lee Anderson appealed; David Dudley did not. Oral argument was heard on October 20, 1992.

Disposition in the Court Below

The Court of Appeals reversed. Dean Witter and Mr. Pahnke filed a Petition for Rehearing. It was denied on December 14, 1992.

STATEMENT OF FACTS

Background Information

Norman Anderson created a trust in 1978, naming his wife, Anna Lee, as beneficiary. He appointed his only child, James, to serve as trustee. R.152. Norman died in 1979, and James Anderson assumed his duties as trustee of the Norman Anderson Trust. R.152.

The Trust assets consisted almost exclusively of shares of stock held in an account in the Salt Lake City branch office of Dean Witter Reynolds, Inc. R.147. In May, 1980, the stock was distributed from the Trust's account, some going into James' personal account with Dean Witter and some going into his

mother's personal account. R.147, Exhibit A; 152-154. Ralph Pahnke was the Dean Witter account executive for the transaction. R.147.

Claims of the Parties

On December 6, 1990, Anna Lee Anderson filed an action against Dean Witter and Ralph Pahnke in the Third Judicial District Court for Salt Lake County, Utah. R.1a; Appendix C. She brought the action as beneficiary of the Trust. She contended the distribution of stock by the trustee violated the allocation scheme set forth in the Trust instrument and that Dean Witter and Ralph Pahnke, as stockbrokers, had a common law duty to supervise the trustee. She demanded money damages.

Dean Witter and Ralph Pahnke filed a motion to dismiss her complaint on April 15, 1991. R.40. They contended actions to recover trust assets must be brought by the trustee, not by the beneficiary and, therefore, Anna Lee lacked standing to sue and the trustee was an indispensable party. On July 16, 1991, the district court granted the motion from the bench, dismissing Anna Lee's complaint. R.91.

On July 22, 1991, before the district court had entered the order of dismissal, an amended complaint was filed. R.92; Appendix D. Anna Lee was replaced as the named-plaintiff by David M. Dudley, the recently appointed successor trustee to James. R.92, 154. Dean Witter and Ralph Pahnke filed a motion

to dismiss Mr. Dudley's amended complaint on August 7, 1991.

R.139. They contended Mr. Dudley's claims were time-barred because the complaint alleged the stock distribution occurred in May 1980 and the action was filed in December 1990, over ten years later.

The district court signed an Order on September 16, 1991, dismissing Anna Lee's complaint. R.214-216. It signed another Order on September 27, 1991, dismissing David Dudley's amended complaint. R.218-221.

On October 9, 1991, Anna Lee filed a notice of appeal. R.224-225. The trustee, Mr. Dudley, was not named in the notice and he did not appeal. Appendix E.

Disposition in the Court of Appeals

On November 13, 1992, the Utah Court of Appeals issued its opinion, reversing and remanding. It held Anna Lee Anderson had standing to bring an action as beneficiary to collect trust assets and that she could pursue this appeal.

ARGUMENT

Introduction

Anna Lee Anderson cannot bring this action as beneficiary to recover Trust assets, absent allegations the trustee failed to bring it after demand or that the trustee's self-interest put him in a position adverse to hers. Anna Lee failed to make these allegations and the district court properly dismissed the action.

Immediately following dismissal Anna Lee voluntarily withdrew as plaintiff in favor of the trustee. She later appealed. Anna Lee was no longer a party and could not appeal.

The Court of Appeals determined both that Anna Lee could bring her action and that she could file this appeal though no longer a party. Dean Witter and Ralph Pahnke petition the Supreme Court to grant a writ of certiorari to review the Court of Appeal's decision. It ignores applicable legal authority and imposes unworkable rules of law on issues of appellate jurisdiction and the authority of a beneficiary to assert trust claims.

Utah case authority does not address the standing of a former party to appeal after withdrawal. Other case law addresses the issue, however. It holds that a former party, after withdrawal from the action, cannot appeal. The Court of Appeal's decision is contrary to law.

The Court of Appeals' decision grants trust beneficiaries the unfettered authority to sue on behalf of a trust, without first demanding the trustee bring suit and without any determination that the trustee is unable to bring suit because of self-interest. The Court's ruling is contrary to law.

The Court of Appeals' decision departs from accepted judicial proceedings within the meaning of Rule 46(c) of the Utah Rules of Appellate Procedure. Moreover, the Court decided an important question of state appellate jurisdiction which has not been, but should be, settled by the Supreme Court pursuant to Rule 46(d) of the Utah Rules of Appellate Procedure.

I. THE COURT OF APPEALS INCORRECTLY CONCLUDED ANNA LEE ANDERSON HAS STANDING TO APPEAL

Anna Lee Anderson filed this action and later withdrew as plaintiff. She allowed another to be substituted as the sole plaintiff. Anna Lee was no longer a party to the action following substitution, and she lost all right to appeal.

Dean Witter and Ralph Pahnke advised the Court of Appeals about the jurisdictional problem posed by Anna Lee's withdrawal and her subsequent notice of appeal. See Brief of Respondents at 8-10. It was the subject of considerable discussion during oral argument. Nevertheless, the issue was relegated to a footnote in the opinion, and what analysis there is, ignores relevant facts and applicable, controlling case

authority. The Court of Appeals incorrectly decided the issue for several reasons:

A. Anna Lee Anderson Substituted David M. Dudley As The Sole Plaintiff

The Court of Appeals first mischaracterized the effect of Anna Lee's filing of the amended complaint by saying she "attempted to file a document labeled Amended Complaint . . . ," and that ". . . it was in substance an attempt to substitute a party plaintiff." Opinion, fn. 1 at 2. (emphasis added). It was not an attempt. The First Amended Complaint was filed with the district court. Substitution of parties was an accomplished fact.

The amended complaint was sufficient in and of itself to substitute Mr. Dudley as plaintiff upon filing.¹ Rule 15 of the Utah Rules of Civil Procedure permits free amendment of a complaint if done before a responsive pleading is filed. The only pleading filed by Dean Witter and Ralph Pahnke was a motion to dismiss under Rule 12(b)(6). It was not a responsive pleading. Heritage Bank & Trust v. Landon, 770 P.2d 1009, 1010 (Utah Ct. App. 1989) ("A motion to dismiss . . . is not a responsive pleading which would preclude an opponent from

¹ Anna Lee's motion to amend the complaint, filed six days after the filing of the amended complaint, was superfluous.

amending a complaint under Utah R. Civ. P. 15(a) 'once as a matter of course.'")

Rule 15's allowance of an amendment "once as a matter of course" permits substitution of parties. The amended complaint effectively changed plaintiffs. Anna Lee was no longer a party; she had been replaced by Mr. Dudley. Roberts v. Husky Industries, Inc., 71 F.R.D. 479 (E.D. Tenn. 1973) (facing a motion to dismiss, plaintiff amended the complaint, before a responsive pleading was filed, to substitute new plaintiffs); Staggers v. Otto Gerda Co., 359 F.2d 292, 296 (2d Cir. 1966) ("Rule 15(a) may be used to substitute new plaintiffs."); Rosier v. Garron, Inc., 199 S.E.2d 50, 55 (W. Va. 1973) ("[T]he federal courts . . . have uniformly held that under proper circumstances, a motion to substitute a party with property capacity to sue is appropriate under Rule 15."); 6 Wright & Miller, Federal Practice and Procedure § 1474 at 549-52 (2d ed. 1990) ("[A] party may make a Rule 15(a) amendment to add, substitute, or drop parties to the action." (footnotes omitted; emphasis added.))

Anna Lee herself acknowledged substitution had been achieved. In a pleading filed with the district court she admitted:

. . . Plaintiff has filed an Amended Complaint in this matter. The Amended Complaint substitutes David M. Dudley as Trustee of the Norman Anderson Trust as the Plaintiff therein.

R.178. She repeated the admission in a subsequent pleading before the district court. R.205-206. And, she admitted to the Court of Appeals in her opening appeal brief that she had "filed an Amended Complaint naming David M. Dudley, Trustee of the Norman Anderson Trust as plaintiff" Brief of Appellant, ¶ 4 at 12.

The First Amended Complaint was filed. It substituted plaintiffs. Anna Lee ceased to be a party.

B. The Court of Appeals Had the Authority and the Duty to Determine Jurisdiction

Second, the Court of Appeals explained that the resolution of the jurisdictional issue depends on the amended complaint and, because it was reversing the dismissal of the original complaint and remanding, the Court would not reach any assignment of error based on the amended complaint. That the Court of Appeals could not do. The Court has the power and the duty to address every jurisdictional issue. It has recognized in prior decisions that "[t]he fundamental and initial inquiry of a court is always to determine its own jurisdictional authority. . . ." Thompson v. Jackson, 743 P.2d 1230, 1232 (Utah Ct. App. 1987). That is true even to the point of the Court raising its own lack of jurisdiction. Coray v. Southern Pac. Co., 184 P.2d 963, 966 (Utah 1947).

C. Anna Lee Anderson Did Not Appeal a Final Order

Third, the Court of Appeals held that, in any event, Anna Lee had appealed the dismissal of the original complaint, which was itself a final order. Not so. The first order of dismissal might have been final for appeal had Anna Lee not elected to amend the complaint before the order was entered. Having done that, the order was at best interlocutory for purposes of appeal because the controversy between the litigants had not ended. Salt Lake City Corp. v. Layton, 600 P.2d 538, 539 (Utah 1979).

In any event, the "finality" of the first dismissal order is irrelevant to the jurisdictional issue raised here. The only appropriate question is, "Who can take the appeal of an otherwise final order?" Certainly not strangers to the action, nor those who at the time of appeal are no longer parties. Anna Lee, by her own admission, was no longer a party. She could not appeal.

D. Anna Lee Anderson Is Not A Party and Cannot Appeal

The Court of Appeals' decision ignores controlling case authority which holds that only parties to a lawsuit may appeal. An illustrative case is Magicsilk Corp. of New Jersey v. Vinson, 924 F.2d 123 (7th Cir. 1991). Magicsilk was the original named plaintiff. Vader Group, the purchaser of Magicsilk's assets,

filed a motion to be substituted as plaintiff. The motion was granted.

Vader subsequently refused to cooperate in discovery in open defiance of a court order. The trial court dismissed the action with prejudice as a result. A notice of appeal was filed in the name of Magicsilk. Id. at 125.

The Seventh Circuit Court of Appeals noticed the problem created by the substitution of Vader as plaintiff and the notice of appeal filed by Magicsilk. Accordingly, the court itself raised the issue of appellate jurisdiction which had been neglected by the parties during briefing. Id. at 124. It dismissed the appeal, observing:

This Court lacks jurisdiction over Magicsilk's appeal. Only parties to a lawsuit may appeal an adverse judgment. Marino v. Ortiz, 484 U.S. 301, 304, 108 S.Ct. 586, 587, 98 L.Ed.2d 629 (per curiam); Bense v. Starling, 719 F.2d 241, 244 (7th Cir. 1983). Magicsilk Corp. of New Jersey, the only company listed on the notice of appeal, has not been a party to this suit since the district court granted Vader's motion to substitute.

Id. at 125.

Another illustrative case is Appeal of District of Columbia Nurses' Ass'n., 854 F.2d 1448 (D.C. Cir. 1988). In that case several individual nurses and their professional association, District of Columbia Nurses' Association ("DCNA"), brought an action challenging the failure of the District of Columbia to pay appropriate overtime pay under the Fair Labor

Standards Act. The District of Columbia contended DCNA lacked standing under the Act and in response, plaintiffs moved to amend their complaint to remove DCNA as a party. Their motion was granted. In spite of withdrawal, DCNA's name continued to appear in the caption.

Some time later, the court granted summary judgment in favor of the District of Columbia and against the individual nurses. A notice of appeal was filed in the name of DCNA. That prompted the Court of Appeals to make an inquiry:

This court entered an order to show cause why the appeal should not be dismissed since the purported appellant was no longer a plaintiff at the time of the judgment and no remaining plaintiff had been identified as an appellant. See Torres v. Oakland Scavenger Co., _____ U.S. _____, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988) (court of appeals only has jurisdiction over appeals of parties identified in notice of appeal); United States v. LTV Corp., 746 F.2d 51, 53 (D.C. Cir. 1984) (only party to district court action may note an appeal).

Id. at 1449. The court ultimately dismissed the appeal. It noted the general rule "that an appellant must be a party to the proceedings in order to file an appeal." Id. at 1449. DCNA had voluntarily removed itself from the action and no longer considered itself a party. Id. at 1449. The court held:

This appeal was noted by a former plaintiff that had become a stranger to the litigation. No remaining plaintiff noted an appeal

Id. at 1451. Cf., Walsh v. Ford Motor Co., 945 F.2d 1188 (D.C. Cir. 1991).

Anna Lee Anderson was no longer a party after she withdrew from the action. She lost all right to appeal.²

II. THERE IS NO ALLEGATION THE TRUSTEE IMPROPERLY NEGLECTED TO BRING THIS ACTION

The Court of Appeals held Anna Lee may bring her action since the first trustee, her son James, "improperly neglected" to bring it. The Court found "neglect" solely from the trustee's failure to bring suit. The Court's definition of neglect is indefensible. It would completely emasculate the general rule giving trustees the exclusive right to maintain trust actions.

The Court's error is highlighted by the recent, well-reasoned opinion of Firestone v. Galbreath, 976 F.2d 279 (6th Cir. 1992). Beneficiaries of a trust sued a trustee and third parties on several tort claims. The trial court dismissed the action, ruling the beneficiaries lacked standing to pursue trust claims against third parties. The beneficiaries were unable, even though given an opportunity to amend their complaint, to allege facts (i.e., prior demand on the trustee to

² David M. Dudley was the only plaintiff remaining after substitution. Mr. Dudley was not named in the notice of appeal, however, and he is barred from pursuing this appeal. Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988) ("The failure to name a party in a notice of appeal is more than excusable 'informality'; it constitutes a failure of that party to appeal."); Magicsilk Corp. of New Jersey v. Vinson, 924 F.2d 123, 125 (7th Cir. 1991); Rule 3(d) of the Utah Rules of Appellate Practice ("The notice of appeal shall specify the party or parties taking the appeal").

sue) necessary to overcome the general rule precluding them from pursuing trust claims.

In affirming the district court, the Sixth Circuit Court of Appeals first reiterated that "generally only the trustee may bring an action on behalf of a trust," but went on to note that "the law makes an exception where the trustee has refused or neglected to bring a demanded action." Id. at 284. The court rejected the beneficiaries' argument that the trustee's "improper neglect" was evidenced by the trustee's failure to bring suit: "This argument is a transparent exercise in semantics by the plaintiffs. Both terms, 'refuse' and 'neglect,' presuppose a demand, which the trustee either will not or forgets to bring." Id. Without allegations of demand made to the trustee to bring suit for the trust, the beneficiaries lacked standing to pursue the action.

Firestone correctly interpreted "neglect" and the Court of Appeals departed from it. The rule adopted by the Court of Appeals not only destroys the general rule giving trustees the exclusive right to bring trust claims, it also relieves beneficiaries who bring suit for trust claims from the application of any statute of limitation. Under the definition adopted by the Court of Appeals, whenever a beneficiary sues a third party for a trust claim, it will always mean the trustee "neglected" to sue. The interpretation is wrong. A trustee's

neglect to bring an action can only be established by allegations of demand that suit be brought, followed by the trustee's failure to act on that demand.

It must be emphasized that the only fact to support the inference drawn by the Court of the trustee's neglect, was his failure to bring this suit. There are no allegations demand was made and refused or ignored.³ Absent those allegations, the Court of Appeals could not have determined Anna Lee comes within the exception. Anna Lee lacks standing.

The sole authority cited by the Court of Appeals for its interpretation of "neglect" is Struble v. New Jersey Brewery Employees' Welfare Trust Fund, 732 F.2d 325 (3d Cir. 1984). Struble does not define "neglect." It does address, however, a beneficiary's right to sue upon the trustee's failure to do so. Rather than accepting the Court of Appeal's overly broad approach -- allowing a beneficiary to sue whenever the trustee does not -- Struble requires the beneficiary to affirmatively allege a breach of trust by the trustee. That was not done here.

III. THERE IS NO ALLEGATION OF HOSTILITY BETWEEN ANNA LEE ANDERSON AND THE TRUSTEE

The Court of Appeals correctly noted the exception that a beneficiary has standing to pursue a trust claim against a

³ The record makes clear that, far from ignoring or refusing to act, James brought suit as trustee on other Trust claims in 1987 against these same defendants. R. 53.

third party if the interests of the trustee are hostile to the beneficiary. The Court incorrectly suggested, however, there is an indication of hostility between Anna Lee as beneficiary and her son, James, as original trustee.

The Court of Appeals did not cite any evidence of hostility. Neither did it draw from the allegations in the complaint any inference of hostility between them. Nor could the Court. The most that can be said of the complaint is it alleges stock held by the Trust was transferred to James by Dean Witter and Ralph Pahnke. There is no allegation the trustee ever knew about the transfer, that he participated in it, or that he intended it to occur.

The complaint goes to extraordinary lengths to insulate the trustee. The entire blame for the transfer is laid at the feet of Dean Witter and Ralph Pahnke.⁴ Thus, the only reasonable inference to draw from the face of the complaint is that the trustee did not know anything was wrong. How then could the trustee's interests be hostile to the beneficiary's when they both allegedly were duped?

CONCLUSION

The Utah Court of Appeals held a former party, after withdrawal from the action, can appeal. The ruling is contrary

⁴ Anna Lee blames Dean Witter and Ralph Pahnke, stock brokers, for allowing her son, James, to administer and act on behalf of the Trust. She holds them to a higher standard than she does the trustee. The law does not impose such an elevated standard on stockbrokers.

to law from other jurisdictions, although not settled in Utah. The issue, an important question of appellate jurisdiction, should be resolved by the Supreme Court.


The Utah Court of Appeals also held a trust beneficiary has unfettered authority to sue on behalf of a trust, without first demanding the trustee bring suit and without any determination that the trustee is unable to bring suit because of self-interest. The ruling is contrary to law, and it creates unworkable rules for trust administration: making the beneficiary, not the trustee, responsible for litigation efforts and allowing a beneficiary to bring suit at any time, without regard for limitations. The Supreme Court should settle the issue.

The Supreme Court should grant a writ of certiorari and review the decision of the Court of Appeals.

DATED: January 13, 1993.

MOYLE & DRAPER, P.C.

By



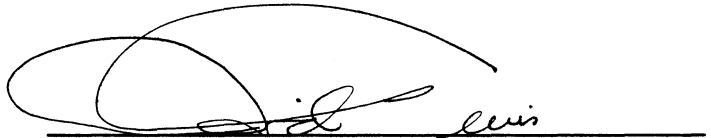
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Defendants, Appellees and
Petitioners

CERTIFICATE OF SERVICE

I certify that on the 13th day of January, 1993, four
copies of the Petition for a Writ of Certiorari were mailed to:

James E. Morton
Ron Walthius
MORTON, SKEEN & RASMUSSEN
1245 Brickyard Road, Suite 600
Salt Lake City, UT 84106

A handwritten signature, likely of Ron Walthius, is written over a horizontal line. The signature is cursive and stylized, with the last name 'Walthius' being more legible than the first name.

This opinion is subject to revision before
publication in the Pacific Reporter.

JACKSON, Judge:

Appellant, Anna Lee Anderson, appeals an order granting appellees' motion to dismiss based on Rules 12(b)(6), 12(b)(7), and 19 of the Utah Rules of Civil Procedure. We reverse and remand.

FACTS

On November 20, 1978, Norman Anderson executed a trust agreement creating the Norman Anderson Trust. The trust was funded by stock held in a brokerage account with Dean Witter, Inc. (Dean Witter). Dean Witter had a copy of the trust agreement that outlined the terms and conditions for disbursement of trust assets. James Anderson, the son of Norman Anderson, was named as trustee for the trust. Anna Lee Anderson, the wife of Norman Anderson, was the sole beneficiary of the trust.

On May 8, 1980, stock was distributed, in violation of the terms of the trust, from the trust into accounts James Anderson and Anna Lee Anderson held with Dean Witter. The distribution was made pursuant to a letter authorizing the distribution prepared by Ralph Pahnke, an employee of Dean Witter. Subsequent to the distribution of the stock, Dean Witter continued to manage Anna Lee Anderson's account. During the term of Dean Witter's management, the assets held in Anna Lee Anderson's account became worthless.

When Anna Lee Anderson learned of the improper distributions in December 1990, she filed a complaint against Pahnke and Dean Witter on December 6, 1990. She sought damages for breach of contract, tortious interference with contract, breach of fiduciary duty, and negligence. The defendants filed a motion to dismiss on April 15, 1991, alleging that the complaint failed to state a claim pursuant to Rule 12(b)(6) because the proper party did not bring the complaint and that the complaint failed to name the trustee as an indispensable party pursuant to Rules 12(b)(7) and 19.¹ The trial court entered an order dismissing the complaint on September 16, 1991.

ISSUES

On appeal, Anna Lee Anderson contends her complaint was improperly dismissed because (1) she was a proper party to bring the suit, and (2) the trustee was not an indispensable party to the action.

STANDARD OF REVIEW

When reviewing a motion to dismiss based on Rule 12(b)(6), an appellate court must accept the material allegations of the complaint as true, and the trial court's ruling should be affirmed only if it clearly appears the complainant can prove no set of facts in support of his or her claims.

Cite as

200 Utah Adv. Rep. 65

**IN THE
UTAH COURT OF APPEALS**

Anna Lee ANDERSON,
Plaintiff and Appellant,
v.
DEAN WITTER REYNOLDS, INC., Ralph
Pahnke, and John Does 1 through 25,
Defendants and Appellees.

No. 920228-CA
FILED: November 13, 1992

Before Judges Garff, Greenwood, and Jackson

Prows v. State, 822 P.2d 764, 766 (Utah 1991); *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990). The facts of the complaint are to be liberally construed and the court must consider all the reasonable inferences to be drawn from the facts in a light most favorable to the plaintiff. *St. Benedicts Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 196 (Utah 1991). "Because the propriety of a 12(b)(6) dismissal is a question of law, we give the trial court's ruling no deference and review it under a correctness standard." *Id.*

ANALYSIS

The appellees allege that Anna Lee Anderson, as a beneficiary to the trust, was not the proper party to bring suit against them. Therefore, pursuant to Rule 12(b)(6), appellees allege Anna Lee Anderson failed to state a claim because she did not have a nexus with the claim. The trial court agreed and dismissed the complaint, finding the trustee should have brought the suit rather than the beneficiary.

Dismissal of a complaint under Rule 12(b)(6) is proper if the plaintiff fails to properly allege standing. See *Ashe Creek Mining Co. v. Lujan*, 969 F.2d 868, 872 (10th Cir. 1992); *Grider v. Texas Oil & Gas Corp.*, 868 F.2d 1147, 1149 (10th Cir.), *cert. denied*, 493 U.S. 820 (1989). Rule 17 provides insight concerning standing to sue in a trust action: "Every action shall be prosecuted in the name of the real party in interest. ... [A] trustee of an express trust ... may sue in that person's name without joining the party for whose benefit the action is brought." Utah R. Civ. P. 17 (1992) (emphasis added).²

Although Rule 17 clearly allows the trustee to sue on behalf of the beneficiary, it does not prevent the beneficiary from suing third parties directly:

It should be noted that the enumerations [e.g., trustee and guardian] are couched in permissive language. The beneficial owner, therefore, is not precluded from suing, nor from joining with the legal title holder, nor from being joined, if the beneficial owner has the right sought to be enforced. Whether he has ... will be determined by principles of substantive law.

3A James W. Moore, et al., *Moore's Federal Practice* §17.12 at 17-118. (2d ed. 1992) (emphasis added) (footnote omitted).³

Although Utah substantive law is especially sparse in this area, it appears the beneficiary has the right to bring an action against a third party when the beneficiary's interests are hostile to those of the trustee. *Salina Canyon Coal Co. v. Klemm*, 76 Utah 372, 290 P. 161 (1930). Other jurisdictions also allow a beneficiary to sue third parties directly. E.g., *Alioto v. United States*, 593 F. Supp. 1402, 1412 (N.D. Cal. 1984) (in action where beneficiary has been damaged by trustee and third party, beneficiary may bring action against third party separately); *Booth v. Security Mut. Life Ins. Co.*, 155 F. Supp. 755,

761 (D.N.J. 1957) (where trustee transfers property in breach of trust with assistance of third parties, third parties are primarily liable to the beneficiary, rather than to the trustee; the right of the beneficiary against the third party is a direct right not derived through the trustee); *Hoyle v. Dickinson*, 746 P.2d 18, 20 (Ariz. Ct. App. 1987) (trust beneficiary may bring action for damages against third party for breach of trust agreement); *Apollinari v. Johnson*, 305 N.W.2d 565, 567 (Mich. Ct. App. 1981) (beneficiary may sue third party without joining trustee).

Further, most jurisdictions follow the general rule set out in Restatement (Second) of Trusts §282 (1976), providing in part:

(1) Where the trustee could maintain an action at law or suit in equity or other proceeding against a third person if the trustee held the property free of trust, the beneficiary cannot maintain a suit in equity against the third person, except as stated in Subsections (2) and (3).

(2) If the trustee improperly refuses or neglects to bring an action against the third person, the beneficiary can maintain a suit in equity against the trustee and the third person.

(Emphasis added.)

In the present situation, it is clear from the complaint the beneficiary could prove facts showing she had standing to bring suit against the third parties for the improper distribution of stock. She could show, at the very least, the trustee improperly "neglected" to bring action against the appellees when he waited over ten years after the improper transfer and still did not bring suit. See *Struble v. New Jersey Brewery Employees' Welfare Trust Fund*, 732 F.2d 325, 337 (3rd Cir. 1984) (where trustee may sue and wrongfully fails to do so, the beneficiary may sue the party or parties the trustee failed to sue).

We conclude Anna Lee Anderson stated a cause of action against the appellees because she could prove facts showing she had standing as beneficiary to pursue the claim. Therefore, the trial court erred in finding the trustee was the only proper party to bring the action. Because we find that Anna Lee was a proper party to bring suit, we need not reach appellees claim that because the trustee was the only party eligible to bring the action, the trustee should have been named as an indispensable party pursuant to Rule 19 of the Utah Rules of Civil Procedure.

CONCLUSION

The trial court improperly dismissed Anna Lee Anderson's complaint because it is clear that she could prove facts showing she has standing to bring claims as a beneficiary against the appellees. Therefore, we reverse the decision of the trial court and remand the case for further proceedings consistent with this opinion.

Norman H. Jackson, Judge

WE CONCUR:
Regnal W. Garff, Judge
Pamela T. Greenwood, Judge

1. After a minute entry dismissing the complaint, but prior to the entry of the order formally dismissing the complaint, Anna Lee Anderson attempted to file a document labeled "Amended Complaint" naming a substituted trustee as a party in the caption of the document. Otherwise the document was identical to the complaint. Accordingly, it was in substance an attempt to substitute a party plaintiff. The trial court granted the motion to dismiss the "Amended Complaint" on September 27, 1991. The order did not state any ground or basis for the ruling but the motion claimed a statute of limitations bar. Although Anna Lee Anderson also appealed the dismissal of the "Amended Complaint," we need not reach that issue because we are reversing the dismissal of the original complaint.

Appellees claim Anderson cannot appeal the original complaint because she was not listed as a party to the "Amended Complaint." However, because we are not reaching the issues presented in the "Amended Complaint" and subsequent motion to dismiss, and because Anderson is appealing a final order, we find that Anderson properly appealed the dismissal of the original complaint. See *Salt Lake City Corp v Layton*, 600 P.2d 538, 539 (Utah 1979).

2. Rule 17 seeks to protect the interests of judicial economy and fairness to the parties in litigation. *Kemp v. Murray*, 680 P.2d 758, 760 (Utah 1984). "The reason the defendant has the right to have the cause of action prosecuted by the real party in interest is so that the judgment will preclude any action on the same demand by another and permit the defendant to assert all defenses or counterclaims available against the real owner of the cause." *Id.* (quoting *Shaw v. Jeppson*, 121 Utah 155, 163, 239 P.2d 745, 748 (1952)).

3. Utah Code Ann. §75-7-402(3)(z) (Supp. 1992) also provides that a trustee has the power to "prosecute or defend actions, claims or proceedings for the protection of the trust assets and of the trustee in the performance of his duties." While this statute empowers the trustee to sue on behalf of the beneficiary, it does not preclude Anderson from suing in her capacity as beneficiary.

ED

DEC 14 1992

IN THE UTAH COURT OF APPEALS

Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

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Anna Lee Anderson,)	ORDER DENYING
)	PETITION FOR REHEARING
Plaintiff and Appellant,)	
)	
v.	)	Case No. 920228-CA
)	
Dean Witter Reynolds, Inc.,)	
Ralph Pahnke, and John Does 1)	
through 25,)	
)	
Defendants and Appellees.)	

THIS MATTER having come before the Court upon appellees' Petition for Rehearing, filed December 4, 1992,

IT IS HEREBY ORDERED that the appellees' Petition for Rehearing is denied.

Dated this 14th day of December, 1992.

FOR THE COURT:



Mary T. Noonan
Clerk of the Court

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2330305

JAMES E. MORTON (A 3739)
PAUL D. HATCH (#1418)
THOMPSON, HATCH, MORTON & SKEEN
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Salt Lake City, Utah 84106
Telephone (801) 484-3000

FILED
DEC 6 3 45 PM '90
BY Cindy Bowerley

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ANNA LEE ANDERSON,)	
Plaintiff,	)	COMPLAINT
	)	(JURY DEMANDED)
vs.)	
DEAN WITTER REYNOLDS, INC.,)	
a foreign corporation,)	
RALPH PAHNKE and)	
JOHN DOES I through XXV,	)	Civil No. 900907186 CN
Defendants.	)	Judge

Plaintiff, Anna Lee Anderson, by and through her counsel of record, Thompson, Hatch, Morton & Skeen, and for causes of action, complains against Defendants as follows:

PARTIES

1. Anna Lee Anderson is an individual residing in Salt Lake County, State of Utah.

2. Defendant Dean Witter Reynolds, Inc. is a foreign corporation and is doing business in Salt Lake County, State of Utah.

3. Defendant Ralph Pahnke is an individual residing in the State of Utah.

4. The true names and capacities of Defendants named herein as John Does I through XXV, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to include their true names and capacities when the same have been ascertained. Plaintiff alleges that each of the Defendants designated herein as John Does I through XXV were responsible, in some manner, based upon the acts and omissions set forth hereafter, for the events and occurrences referred to hereinafter and for the resulting injury and damage to Plaintiff. Plaintiff further alleges that each of the Defendants designated herein as John Does I through XXV were, for all relevant periods, an agent or employee of the other Defendants herein, and were at all times hereinafter mentioned acting within the purpose and scope of said agency or employment.

FACTUAL BACKGROUND

5. On or about November 20, 1978, Norman Anderson executed a Trust Agreement which created the Norman Anderson Trust.

6. On or about November 28, 1978, Plaintiff Anna Lee Anderson executed a Trust Agreement which created the Anna Lee Anderson Trust.

7. In addition, during the approximate same period of time, both Norman Anderson and Anna Lee Anderson executed their respective Last Wills and Testaments.

8. Shortly after the execution by Norman Anderson of the Trust Agreement establishing the Norman Anderson Trust, Norman Anderson transferred certain property into said Trust. Included in such transfer were 20,500 shares of the common stock of Levi Straus & Co.

9. James N. Anderson, Norman Anderson and Anna Lee Anderson's son, was designated by the Norman Anderson Trust Agreement as the Trustee for such Trust.

10. On or about November 20, 1978, Norman Anderson established an account with Defendant Dean Witter Reynolds, Inc. at its Salt Lake City office.

11. Defendant Dean Witter Reynolds, Inc. was furnished a copy of the Norman Anderson Trust Agreement at the time such Trust Account was opened with Defendant Dean Witter Reynolds, Inc.

12. Defendant Dean Witter Reynolds, Inc. forwarded a copy of the Norman Anderson Trust Agreement to its trust department located at the regional office of Dean Witter Reynolds in San Francisco, California.

13. The Dean Witter Reynolds trust department in San Francisco, California reviewed said Trust Agreement and sent directives to the Salt Lake City office of Dean Witter Reynolds,

Inc. with respect to the handling by Dean Witter Reynolds, Inc. of the Norman Anderson Trust.

14. The Norman Anderson Trust Agreement, a copy of which is attached hereto as Exhibit "A", provides for the creation upon the death of Norman Anderson of two trusts, namely, a "Marital Trust" and a "Family Trust".

15. The provisions of the Norman Anderson Trust Agreement direct the Trustee, and third parties dealing with the Trustee, with respect to the maintenance, administration, management, and distribution of assets held in said Trust.

16. The Marital Trust requires the Trustee to distribute income from the Marital Trust to Anna Lee Anderson on at least a quarterly basis.

17. In addition, the Marital Trust allows the Trustee to make distributions of principal to Anna Lee Anderson for her care, comfort, support and maintenance including the purchase of residences.

18. The Marital Trust also provides that the Trustee may make distributions of principal to any person designated in writing by Anna Lee Anderson.

19. The Family Trust allows the Trustee to make distributions of principal to Anna Lee Anderson, provided income from all other sources (including the Marital Trust) are insufficient for her care, comfort, support and maintenance.

20. The Family Trust provides for the distribution of the balance of the Family Trust assets after Anna Lee Anderson's death.

21. On or about May 8, 1980, Defendant Ralph Pahnke prepared a letter on the letterhead of Defendant Dean Witter Reynolds, Inc. which provided for the distribution of 41,000 shares of the common stock of Levi Straus & Co. as follows:

a. 24,118 shares were distributed to the personal securities account at Dean Witter Reynolds, Inc. of James N. Anderson;

b. 16,882 shares were distributed to the Anna Lee Anderson Trust Account at Dean Witter Reynolds, Inc.

22. The value of the Levi Straus & Co. stock distributed to James N. Anderson amounted to \$871,238.63.

23. The value of the Levi Straus & Co. stock distributed to the Anna Lee Anderson Trust amounted to \$609,845.36.

24. Neither of the distributions were in accordance with the provisions, terms and conditions of the Norman Anderson Trust Agreement which was in the possession of Defendant Pahnke and Defendant Dean Witter Reynolds, Inc.

25. Subsequent to such distributions, Defendant Dean Witter Reynolds, Inc. continued to manage the Anna Lee Anderson Trust Account. During the terms of Dean Witter Reynolds, Inc.'s management of such Trust Account, the Trust Account became valueless.

26. The distributions induced by and affected by Defendant Pahnke and Defendant Dean Witter Reynolds were unlawful, and in direct contravention of the provisions of the Norman Anderson Trust Agreement.

27. Defendant Pahnke and Defendant Dean Witter Reynolds, Inc. owed Anna Lee Anderson, the beneficiary of the Norman Anderson Trust, a duty of inquiry and a duty of good faith dealing when effectuating transactions with the Trustee of such Trust.

28. In addition, Defendants Pahnke and Dean Witter Reynolds, Inc. were required by applicable law to not assist, induce, aid, abet, or in any other manner facilitate transactions that were in violation of the terms of the Trust Agreement.

29. The conduct of Defendants Pahnke and Dean Witter Reynolds, Inc. was malicious, and wholly without good cause or good faith.

30. As a direct and proximate result of the wrongful, illegal, negligent, and unconscionable acts of Defendants Pahnke and Dean Witter Reynolds, Inc., Plaintiff has been damaged in an amount to be proven at trial.

FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

31. Paragraphs 1 through 30 are realleged as if set out in full herein.

32. When Defendants Pahnke and Dean Witter Reynolds, Inc. accepted an account with the Norman Anderson Trust, they con-

tracted with said Trust to comply with applicable rules and regulations of the New York Stock Exchange, the National Association of Securities Dealers, as well as Federal and State law.

33. In addition, Defendants Pahnke and Dean Witter Reynolds, Inc. contracted to manage the accounts with the highest standards of fair dealing.

34. The conduct of Defendants Pahnke and Dean Witter Reynolds, Inc. as hereinabove alleged constitutes a breach in violation of the third party beneficiary contract existing between Anna Lee Anderson and Defendants Pahnke and Dean Witter Reynolds, Inc.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

SECOND CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH CONTRACT)

35. Paragraphs 1 through 30 are realleged as if set out in full herein.

36. The conduct of Defendants Pahnke and Dean Witter Reynolds, Inc. hereinabove alleged constitutes an unlawful and tortious interference with the contract rights of Plaintiff.

37. As a direct and proximate result of Defendants Pahnke and Dean Witter Reynolds, Inc.'s unlawful and tortious conduct, Plaintiff has been damaged in an amount to be proven at trial.

38. Defendants Pahnke and Dean Witter Reynolds, Inc.'s conduct was wholly without good cause or good faith.

39. Plaintiff is entitled to an award of punitive damages in an amount calculated to punish and deter.

40. Plaintiff is entitled to an award of reasonable attorney's fees in connection with the prosecution of this action.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

THIRD CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

41. Paragraphs 1 through 30 are realleged as if set out in full herein.

42. Defendants Pahnke and Dean Witter Reynolds, Inc. carefully reviewed the terms and conditions of the Norman Anderson Trust Agreement to the extent that such Trust Agreement was forwarded to the Dean Witter Reynolds trust department in San Francisco, California for scrutiny.

43. In accepting the Norman Anderson Trust and opening a securities account for said Trust, Defendants Pahnke and Dean Witter Reynolds became de facto trustees of the Norman Anderson Trust.

44. Defendants Pahnke and Dean Witter Reynolds, Inc. owed Plaintiff the degree of care and loyalty imposed upon trustees by applicable law.

45. Defendants Pahnke and Dean Witter Reynolds, Inc. breached and violated their fiduciary duty to Plaintiff in undertaking the wrongful conduct as hereinabove alleged.

46. As a direct and proximate result of Defendants Pahnke and Dean Witter Reynolds, Inc.'s breach of fiduciary duty, Plaintiff has been damaged in an amount to be proven at trial.

47. Plaintiff is entitled to an award of punitive damages in an amount calculated to punish and deter.

48. Plaintiff is entitled to an award of reasonable attorney's fees incurred in connection with the prosecution of this action.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

FOURTH CAUSE OF ACTION
(NEGLIGENCE)

49. Paragraphs 1 through 30 are realleged as if set out in full herein.

50. Defendants Pahnke and Dean Witter Reynolds, Inc. owed Plaintiff a duty to not induce or facilitate the violation of any provision of the terms and conditions of the Norman Anderson Trust Agreement.

51. Defendants Pahnke and Dean Witter Reynolds, Inc. breached and violated their duty to Plaintiff as hereinabove alleged.

52. As a direct and proximate result of the careless, negligent, reckless, and unlawful acts and omissions of Defendants Pahnke and Dean Witter Reynolds, Inc., Plaintiff has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants Pahnke and Dean Witter Reynolds, Inc., jointly and severally, as follows:

A. On Plaintiff's First Cause of Action for breach of contract, as follows:

(i) For damages in an amount to be proven at trial;

(ii) For costs of Court incurred herein; and

(iii) For such other and further relief as the Court deems just and proper in the premises.

B. On Plaintiff's Second Cause of Action for tortious interference with contract, as follows:

(i) For damages in an amount to be proven at trial;

(ii) For punitive damages in an amount calculated to punish and deter;

(iii) For costs of Court incurred herein including reasonable attorney's fees;

(iv) For such other and further relief as the Court deems just and proper in the premises.

C. On Plaintiff's Third Cause of Action for breach of fiduciary duty, as follows:

(i) For damages in an amount to be proven at trial;

(ii) For punitive damages in an amount calculated to punish and deter;

(iii) For costs of Court incurred herein including reasonable attorney's fees;

(iv) For such other and further relief as the Court deems just and proper in the premises.

D. On Plaintiff's Fourth Cause of Action for negligence, as follows:

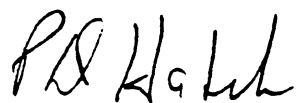
(i) For damages in an amount to be proven at trial;

(ii) For costs of Court incurred herein; and

(iii) For such other and further relief as the Court deems just and proper in the premises.

DATED this 6th day of December, 1990.

THOMPSON, HATCH, MORTON & SKEEN

By 
James E. Morton
Paul D. Hatch
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff, by and through her counsel of record,
Thompson, Hatch, Morton & Skeen, hereby demands a trial by jury in
this matter.

DATED this 6th day of December, 1990.

THOMPSON, HATCH, MORTON & SKEEN

By PD Hatch
James E. Morton
Paul D. Hatch
Attorneys for Plaintiff

Plaintiff's Address:

866 16th Avenue
Salt Lake City, Utah 84103

TRUST AGREEMENT

THIS TRUST AGREEMENT is made this 22nd day of NOVEMBER, 1978, between NORMAN ANDERSON of Salt Lake City, Utah, hereinafter sometimes called the "Trustor" and JAMES N. ANDERSON, of Park City, Utah, hereinafter sometimes called the "Trustee".

Trustor does hereby transfer to the Trustee the property listed on Schedule "A" and the Trustee agrees to hold such property and any other property added to this Trust on the terms and conditions stated herein. Trustor or any other person or persons may add such other property to the trust property as may be acceptable to the Trustee by either inter vivos or testamentary transfer; and such additional property when delivered to the Trustee shall become a part of the Trust and be held by the Trustee on the terms and conditions stated herein.

ARTICLE I

DESIGNATION AND PURPOSE OF TRUST

1.1 Designation. This Trust may be designated the NORMAN ANDERSON TRUST.

1.2 Purpose. This Trust is established for the primary benefit of Trustor during Trustor's lifetime and of Trustor's family. Trustor's family consists of Trustor's wife, Anna Lee Anderson, and Trustor's son, James N. Anderson.

EXHIBIT "A"

ARTICLE II

DISPOSITION OF INCOME AND PRINCIPAL
DURING THE LIFETIME OF TRUSTOR

During the lifetime of the Trustor, such part or all of the income and/or principal of the trust estate shall be paid or delivered to such persons and in such amounts from time to time as the Trustor shall direct in writing signed by Trustor and delivered to Trustee; or in the absence of such direction, the Trustee shall pay or apply for the benefit of a class consisting of Trustor and Trustor's wife or any member of such class, such amounts to such persons as in his sole and absolute discretion he deems necessary and proper for the health, support, maintenance and welfare of Trustor and said wife.

ARTICLE III

DISPOSITION OF INCOME AND PRINCIPAL
UPON DEATH OF TRUSTOR

3.1 Settlement of Debts and Expenses. Upon the death of the Trustor, the Trustee may, in th sole and absolute discretion of the Trustee, pay from the Trust or advance such sums to the estate or personal representative of Trustor, with or without interest, as may be necessary for the settlement of Trustor's estate, such amounts as expenses of his last illness, funeral and burial, debts of the Trustor, inheritance taxes, estate taxes and other

taxes imposed by the state or federal government, and any and all expenses of administration of Trustor's estate. Provided, however, that the foregoing may not be satisfied from the proceeds (i) of any life insurance policy on the life of Trustor, or (ii) of any death benefit payable by reason of the Trustor having been a participant in an employee benefit plan if such proceeds are not included in the Trustor's gross estate for federal estate tax purposes.

3.2 Trustor's Family. Upon the death of Trustor, the Trustee may make the payments provided in Section 3.1, if any, or make adequate provision therefor, and shall divide and distribute the trust estate then remaining, including income, as follows:

3.2.1 Wife Not Surviving. If Trustor's wife does not survive Trustor (and it is hereby directed that for purposes of this Trust if Trustor and Trustor's wife shall die under circumstances that it is difficult or impossible to determine who died first, Trustor's wife shall be presumed to have survived Trustor), the Trustee shall hold, administer and distribute the trust estate, including all assets distributable to the Trust by reason of the death of Trustor, in one Trust, to be called the "Family Trust" to be administered as provided in 3.4.

3.2.2 Wife Surviving. If Trustor's wife does survive Trustor, the Trustee shall divide the trust estate, including all assets distributable to the Trust by reason of the death of Trustor, into two separate trusts, the first to be called the "Marital Trust" and the second the "Family Trust" to be administered as provided in 3.3 and 3.4.

A. Marital Trust Allocation. There shall be placed in the Marital Trust that portion of the trust estate which is equal in value, as finally determined for federal estate tax purposes, to the amount which is equal to the lesser of:

(1) The maximum allowable marital deduction under federal estate tax laws;
or

(2) The minimum amount which, after allowing for any unified credit which has not been allowed during Trustor's lifetime, and any other deductions, exemptions or credits which will result in no federal estate tax being imposed on Trustor's estate.

and which is reduced by the value of any property or any interests in property as finally determined for federal estate tax purposes which passes

or has passed from Trustor to Trustor's wife, other than through the Marital Trust, by reason of said wife being a surviving joint tenant, or an insurance beneficiary, inchoate dower or any statutory interest similar thereto, by operation of law, or otherwise. However, there shall not be allocated to the Marital Trust, any property or interest in property or the proceeds of any property or assets which do not qualify for the marital deduction for federal estate tax purposes; nor shall there be allocated to the Marital Trust except when other assets are insufficient to satisfy such fractional share, any property or interest in property or the proceeds of any property or assets (i) with respect to which any tax credit or deduction shall be available because it is subject to both federal estate and federal income tax; or (ii) with respect to which any estate or death taxes are paid to any foreign country or any of its possessions or subdivisions. The Marital Trust shall not be reduced for any inheritance or estate taxes, payable as a result of the death of Trustor. The Trustee must allocate to the Marital Trust property or assets, including cash, fairly representative

of the appreciation or depreciation in the value of all property available for distribution to such Trust.

B. Family Trust Allocation. There shall be placed in the Family Trust that portion of the trust estate not allocated to the Marital Trust.

3.3 Marital Trust. The estate and property of the Marital Trust shall be held, administered and distributed by the Trustee for the purposes and upon the uses and trusts as follows:

3.3.1 Distribution During Lifetime of Wife.

During the lifetime of Trustor's wife after Trustor's death:

A. The Trustee shall pay to the Trustor's wife, commencing as of the date of Trustor's death, all of the income from the Trust in monthly or other convenient installments, but in no event less frequently than in quarter-annual installments; and

B. Whenever the Trustee determines that the funds available to Trustor's wife from all sources, including the income from the Marital Trust, are not sufficient for the proper care, maintenance, support and travel, including but not limited to the needs arising from illness, accident or misfortune of

Trustor's wife and family, and for funds to enable the purchase of residences, the Trustee, at any time and from time to time, may in his sole discretion pay or distribute to Trustor's wife so much of the principal of the Trust as he shall deem necessary or advisable under the circumstances.

C. The Trustee shall pay out of principal of the Marital Trust such amount or amounts, up to the full amount thereof, as Trustor's wife shall from time to time designate in writing delivered to Trustee to any person or persons, including Trustor's wife.

3.3.2 Distributions on Death of Wife. Upon the death of Trustor's wife, the Trustee shall pay over, deliver and distribute all of the rest, residue and remainder of the Trust to such persons and parties, including the estate of Trustor's wife, as Trustor's wife shall direct or appoint by provision of the last will of said wife specifically referring to this power of appointment; to the extent this general power of appointment is not exercised, then upon the death of Trustor's wife the Trustee shall continue to hold, administer and distribute the remainder of the Marital Trust as shall not have been appointed by Trustor's

wife, subject to and under the provisions of 3.4.

3.4 Family Trust. The estate and property of the Family Trust shall be held, administered and distributed by the Trustee for the purposes and upon the uses and trusts as follows:

3.4.1 Distributions During Lifetime of Wife. During the lifetime of Trustor's wife after Trustor's death, whenever the Trustee determines that the funds available to Trustor's wife from all sources, including the income and principal from the Marital Trust are not sufficient for the proper care, maintenance, support and travel, including but not limited to the needs arising from illness, accident or misfortune of Trustor's wife, and for funds to enable the purchase of residences, the Trustee, at any time and from time to time, may in his sole discretion pay or distribute to Trustor's wife so much of the income and/or principal of the Trust as he shall deem necessary or advisable under the circumstances.

3.4.2 Distribution on Death of Wife. Upon the death of Trustor's wife, if Trustor's wife survives Trustor; the Trustee shall distribute the remainder of the Family Trust to or for the benefit of a class or any member or members thereof consisting of Trustor's son, the descendants of Trustor's son, including any of such descendants now living

or hereafter born, the spouses of Trustor's son and the spouses of the descendants of Trustor's son (including surviving spouses of Trustor's deceased son and his descendants) as Trustor's wife shall direct or appoint by provision of the last will of said wife specifically referring to this special power of appointment; to the extent this special power of appointment is not exercised, then upon the death of Trustor's wife, the Trustee shall distribute the remainder of the Family Trust as shall not have been appointed by Trustor's wife to Trustor's son, James N. Anderson, if he is then living, but if he is not then living to Trustor's son's then living descendants, upon the principle of representation, subject to the provisions of 3.5. If none of the descendants of Trustor are then living, the Trustee shall distribute the entire trust estate to the heirs at law of Trustor as determined pursuant to the laws of descent and distribution of the State of Utah in effect at such time as if Trustor had died at such time.

3.4.3 Distribution on Death of Trustor.

Upon Trustor's death if Trustor's wife does not survive Trustor, the Trustee shall distribute the Family Trust to Trustor's son, James N. Anderson, if he is then living but if he is not then living to Trustor's son's then living descendants upon the principle of representation, subject to the provisions

of 3.5. If none of the descendants of Trustor are then living, the Trustee shall distribute the entire trust estate to the heirs at law of Trustor as determined pursuant to the laws of descent and distribution of the State of Utah in effect at such time as if Trustor had died at such time.

3.5 Minor Beneficiaries Trust. If under any provision of this Trust any beneficiary becomes entitled to final distribution of any share or portion of the trust estate and such beneficiary is not of the age of 21 years, the share of such beneficiary shall be retained by the Trustee, until such beneficiary attains the age of 21 years, paying out such portion of the income and principal thereof as the Trustee in its sole discretion deems necessary or advisable to provide for the care, comfort, support, maintenance and education of such beneficiary and distributing any undistributed portion of such share or portion of a share to such beneficiary when he or she attains the age of 21 years, or to his or her estate if he or she should die before attaining the age of 21 years.

ARTICLE IV

AMENDMENT OR REVOCATION

4.1 During Lifetime of Trustor. The Trustor reserves the right at any time or times to amend or revoke this instrument and the trusts hereunder, in whole or in part, by an instrument or instruments in writing signed

by Trustor and delivered in Trustor's lifetime to the Trustee. If this instrument is revoked in its entirety, the revocation shall take effect upon the delivery of the required writing to the Trustee. On the revocation of this instrument in its entirety, the Trustee shall deliver to the Trustor, or as Trustor may direct in the instrument of revocation, all of the trust property.

4.2 By Will of Trustor. The Trustor reserves the right to amend or revoke this instrument and the trusts hereunder, in whole or in part, by his last will which specifically refers to this instrument and specifically directs what amendments are to be made or states that the instrument is revoked. If this instrument is revoked in its entirety by the last will of the Trustor, the Trustee shall deliver to the Trustor's estate, or as Trustor's will may direct, all of the trust property.

4.3 Acceptance by Trustee. If this Trust or any provision thereof is amended, the amendment shall take effect only when accepted in writing by the Trustee. This Trust shall be irrevocable and unamendable during any period of incompetency of the Trustor and shall become irrevocable and unamendable upon the death of the Trustor or prior thereto if by amendment Trustor has relinquished all of Trustor's right to amend or revoke this instrument.

ARTICLE V

POWERS OF TRUSTEE

The Trustee shall have all of the powers as stated in Part 4 of Chapter 7 of the Utah Uniform Probate Code and entitled Uniform Trustee's Powers Provisions. In addition thereto and not by way of limitation, the Trustee shall have the power, to retain any asset originally or later contributed to the trust estate whether or not such asset be of a character permissible for investment by fiduciaries; to retain and purchase assets with a view to possible increase in value notwithstanding the amount or absence of income therefrom; to retain and purchase assets notwithstanding the lack of diversification of the trust assets; to retain, purchase, sell or exchange any and all stocks, bonds, notes or other securities or any variety of real or personal property, including stocks or interests in investments, mutual funds to make distributions of principal or income in kind; to enter into any transaction, including, but not limited by advancing funds, purchasing assets, selling assets (and paying, with or without arrangements for reimbursement, any sums necessary for the settlement of the estate of Trustor) with the Trustee or legal representative of any other trust or estate in which any beneficiary hereunder has any beneficial interest even though such Trustee or legal representative is also Trustee hereunder; and to commingle the funds and assets of any trust

estate hereunder with any other trust estate hereunder so long as proper records are kept of the assets allocable to any such trust.

ARTICLE VI

INSURANCE PROVISIONS

6.1 Power in the Trustor. The Trustor reserves the right by Trustor's own act alone, without the consent or approval of the Trustee, to sell, assign or hypothecate any policies of insurance made payable to the Trustee hereunder, to exercise any option or privilege granted by such policies, including, but without limiting the generality of the foregoing, the right to change the beneficiary of such policies, and to receive all payments, dividends, surrender values, benefits or privileges of any kind which may accrue on account of such policies during Trustor's lifetime. Furthermore, the Trustee agrees to deliver to the Trustor on Trustor's written request signed by Trustor and delivered to Trustee any of such policies deposited with the Trustee hereunder.

6.2 Duties of Trustee. The Trustee shall hold any policies of insurance which may be deposited with him, but without any obligation to pay premiums, assessments or other charges upon any of the policies or to otherwise preserve them or any of them as binding contracts of insurance. Upon the death of the insured or upon the maturity date of any policy assigned or payable

to the Trustee, the Trustee shall take such proceedings as in his judgment he shall deem necessary to collect all proceeds due on the policies and he may, if he so elects, exercise any settlement options available under the policies. The Trustee is authorized to compromise and adjust claims arising out of such insurance policies, upon such terms and conditions as the Trustee shall deem advisable, and to the extent necessary may maintain or defend any suit, provided, however, the Trustee shall be under no duty to maintain or enter into any litigation unless his expenses, including counsel fees and costs, have been advanced or guaranteed in an amount and in a manner reasonably satisfactory to the Trustee. The Trustee may repay any advances made by him or reimburse himself for any such fees and costs out of the principal or income of this Trust. The receipt of the Trustee to the insurer shall be a full discharge of the insurer and Trustee alone shall thereafter be required to see to the application of the proceeds.

ARTICLE VII

THE TRUSTEE

7.1 Accounting. With respect to each separate trust created herein, the Trustee shall render annually an account of income and principal, including a statement of all receipts, disbursements and capital changes, to all beneficiaries then eligible to receive income or to the natural or legal guardians of such beneficiaries, upon, but only upon the request of any such beneficiary.

7.2 Bond. No bond shall be required of the original Trustee hereunder or of any successor trustee or, if bond is required by law, no surety on such bond shall be required.

7.3 Compensation. The Trustee shall be entitled to a reasonable fee for his services commensurate with fees charged by corporate trustees in Salt Lake City, Utah for similar services. The Trustee may charge a reasonable fee for transfers to a successor trustee and for any final distribution of any share of the trust estate based upon the work involved in such transfer or final distribution.

7.4 Resignation. The Trustee may resign at any time by giving thirty (30) days written notice to Trustor, or, after the death of the Trustor, to Trustor's wife. Upon such notice, Trustor, or after the death of Trustor, Trustor's wife may appoint a successor trustee. If no such appointment is made within thirty (30) days after the Trustee gives its notice of resignation, then the District Court of Salt Lake County or any judge thereof may appoint a successor trustee upon application of the resigning Trustee or of any other interested party.

7.5 Removal. The Trustee may be removed by the Trustor or after the death of the Trustor, by Trustor's wife by giving thirty (30) days written notice signed by Trustor, or Trustor's wife, as the case may be and

delivered to Trustee, in which the successor trustee is designated to the then acting Trustee.

7.6 Successor Trustee. A successor trustee may be either a corporation authorized under applicable law to act as trustee or an individual. Any such successor trustee shall act as Trustee hereunder without the execution or filing of any writing or any further action on the part of Trustor or of his wife or of any beneficiary hereunder. Upon the appointment of a successor trustee, the former Trustee shall promptly make an accounting and distribute all assets of the trust estate to the successor trustee. An additional or successor trustee shall not be liable for any action taken by the Trustee prior to the time such additional or successor trustee becomes a trustee.

ARTICLE VIII

MISCELLANEOUS

8.1 Powers of Appointment. The power of the donee over any power of appointment granted in this agreement shall include all lawful exercises thereof, without limitation, specifically including but not limited to, the power to make appointments outright to, or to a trustee to hold in trust for the exclusive benefit of, any one or more of the object of the power; to create life estates and other limited estates; to create general and special powers of appointment and to appoint subject to lawful spendthrift restrictions and other lawful conditions, provided that no one other than an object of the power is benefited thereby.

8.2 Spendthrift Clause. The interest of each beneficiary in the income or principal of any trust created hereunder shall be free from the control or interference of any creditor of a beneficiary or of any spouse of a married beneficiary and shall not be subject to attachment or susceptible of anticipation or alienation. Nothing contained in this paragraph 8.2 shall be construed as restricting in any way the exercise of any power or discretion granted hereunder.

8.3 Definitions. References herein to "child" or "children" refer only to the child designated in Article I. References herein to "descendant" or "descendants" shall mean lawful blood descendants in the first, second or other degree of the ancestor designated and, in all such cases, (a) an adopted child and such adopted child's lawful blood descendants shall be considered as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents, and (b) a child in gestation which is later born alive shall be regarded as a child in being during the period of gestation.

8.4 Governing Law. This agreement has been accepted by the Trustee in the State of Utah and all questions concerning its construction shall be governed by the laws of that state. All questions concerning the administration of the Trust shall be governed by the laws

of the jurisdiction in which the principal office of the Trustee (from time to time acting) is located.

8.5 Invalid Provisions. If any provision of this Trust is held to be invalid, none of the other provisions shall thereby be rendered invalid or inoperative, but such provisions shall be given full force and effect as herein provided. If any provisions of this trust instrument violate the rules against perpetuities now or hereafter in effect, in the state within which this Trust is being administered, that portion of the trust or trusts so affected shall be administered as herein provided until the termination of the maximum period authorized by law, at which time and forthwith such part of the said trust estate so affected shall be distributed in fee simple to the beneficiary or beneficiaries in the proportions in which they are then entitled to enjoy the benefits so terminated. For purposes of computing such time rules, the lives in being shall be those of the Trustor, Trustor's wife and their descendants living at the time the trust or trusts herein established become irrevocable.

8.6 Residence Property. If any residence of Trustor or Trustor's wife is or becomes a part of any trust estate created hereunder, the Trustee is authorized and directed to allow Trustor and Trustor's wife, or either of them, to use and occupy any such residence without payment of rent therefor for so long as Trustor and Trustor's wife, or either of them, continue to so occupy such residence or

residences. During such occupancy, Trustor hereby authorizes but does not direct Trustee, to pay, in his discretion, from the income or principal of the trust estate which holds an interest in any such residence, any taxes, assessments, fire and casualty and liability insurance premiums, maintenance costs, ordinary repairs and replacements and reasonable improvements for any such residence. With the written consent of Trustor, or after Trustor's death, Trustor's wife, signed by Trustor or Trustor's wife, as the case may be, and delivered to Trustee, the Trustee may sell such residence. If requested in such writing the proceeds of the sale (together with any additional assets of the trust estate) shall be used by the Trustee to purchase, acquire, or build a substitute residence, taking title in the name of the Trustee and allowing Trustor and Trustor's wife, or either of them, to occupy such residence on the terms previously set out in this paragraph. If a substitute residence is not requested in such writing, the proceeds of the sale of any such residence shall be held, administered and distributed by the Trustee pursuant to the terms of the Trust estate involved without regard to this paragraph.


8.7 Trustee May Rely on Wills - Presumption

In ascertaining whether there has been an amendment of this Trust by the last will of the Trustor or whether there has been an exercise of any powers which have been granted to

any beneficiary herein and which may be exercised by any such beneficiary's last will, the Trustee shall be protected in relying upon an instrument admitted to probate in any jurisdiction as the last will of the Trustor or as the last will of any beneficiary who has such a power. Unless the Trustee has actual notice of the admission to probate of such a will within 6 months after the death of Trustor or any such beneficiary, it will be conclusively presumed that no such will has been admitted to probate, that no such will exists and that the Trustor or beneficiary, as the case may be, died intestate and the trust estate shall be administered accordingly whether or not such a will is thereafter found to exist.

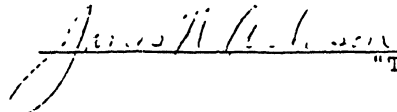
IN WITNESS WHEREOF, this instrument has been signed as of the day and year first above written.

NORMAN ANDERSON



"Trustor"

JAMES N. ANDERSON



"Trustee"

JAMES E. MORTON (A 3739)
PAUL D. HATCH (#1418)
RONALD C. WOLTHUIS
THOMPSON, HATCH, MORTON & SKEEN
Attorneys for Plaintiff
1245 Brickyard Road, Suite 600
Salt Lake City, Utah 84106
Telephone (801) 484-3000

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DAVID M. DUDLEY, Trustee of the)	
NORMAN ANDERSON TRUST,)	
	)	FIRST AMENDED COMPLAINT
Plaintiff,	)	(JURY DEMANDED)
)	
vs.)	
)	
DEAN WITTER REYNOLDS, INC.,)	
a foreign corporation,)	
RALPH PAHNKE and)	
JOHN DOES I through XXV,	)	Civil No. 900907186 CN
)	
Defendants.)	

Plaintiff, David M. Dudley as Trustee of the Norman Anderson Trust, by and through his counsel of record, Thompson, Hatch, Morton & Skeen, and for causes of action, complains against Defendants as follows:

PARTIES

1. David M. Dudley is an individual acting as Trustee of the Norman Anderson Trust.

2. Defendant Dean Witter Reynolds, Inc. is a foreign

corporation and is doing business in Salt Lake County, State of Utah.

3. Defendant Ralph Pahnke is an individual residing in the State of Utah.

4. The true names and capacities of Defendants named herein as John Does I through XXV, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to include their true names and capacities when the same have been ascertained. Plaintiff alleges that each of the Defendants designated herein as John Does I through XXV were responsible, in some manner, based upon the acts and omissions set forth hereafter, for the events and occurrences referred to hereinafter and for the resulting injury and damage to Plaintiff. Plaintiff further alleges that each of the Defendants designated herein as John Does I through XXV were, for all relevant periods, an agent or employee of the other Defendants herein, and were at all times hereinafter mentioned acting within the purpose and scope of said agency or employment.

FACTUAL BACKGROUND

5. On or about November 20, 1978, Norman Anderson executed a Trust Agreement which created the Norman Anderson Trust.

6. On or about November 28, 1978, Anna Lee Anderson,

the wife of Norman Anderson, executed a Trust Agreement which created the Anna Lee Anderson Trust.

7. In addition, during the approximate same period of time, both Norman Anderson and Anna Lee Anderson executed their respective Last Wills and Testaments.

8. Shortly after the execution by Norman Anderson of the Trust Agreement establishing the Norman Anderson Trust, Norman Anderson transferred certain property into said Trust. Included in such transfer were 20,500 shares of the common stock of Levi Straus & Co.

9. James N. Anderson, Norman Anderson and Anna Lee Anderson's son, was designated by the Norman Anderson Trust Agreement as the Trustee for such Trust and has subsequently been replaced by David M. Dudley as Trustee for such Trust.

10. On or about November 20, 1978, Norman Anderson established an account with Defendant Dean Witter Reynolds, Inc. at its Salt Lake City office.

11. Defendant Dean Witter Reynolds, Inc. was furnished a copy of the Norman Anderson Trust Agreement at the time such Trust Account was opened with Defendant Dean Witter Reynolds, Inc.

12. Defendant Dean Witter Reynolds, Inc. forwarded a copy of the Norman Anderson Trust Agreement to its trust department located at the regional office of Dean Witter Reynolds in San Francisco, California.

13. The Dean Witter Reynolds trust department in San Francisco, California reviewed said Trust Agreement and sent directives to the Salt Lake City office of Dean Witter Reynolds, Inc. with respect to the handling by Dean Witter Reynolds, Inc. of the Norman Anderson Trust.

14. The Norman Anderson Trust Agreement, a copy of which is attached hereto as Exhibit "A", provides for the creation upon the death of Norman Anderson of two trusts, namely, a "Marital Trust" and a "Family Trust".

15. The provisions of the Norman Anderson Trust Agreement direct the Trustee, and third parties dealing with the Trustee, with respect to the maintenance, administration, management, and distribution of assets held in said Trust.

16. The Marital Trust requires the Trustee to distribute income from the Marital Trust to Anna Lee Anderson on at least a quarterly basis.

17. In addition, the Marital Trust allows the Trustee to make distributions of principal to Anna Lee Anderson for her care, comfort, support and maintenance including the purchase of residences.

18. The Marital Trust also provides that the Trustee may make distributions of principal to any person designated in writing by Anna Lee Anderson.

19. The Family Trust allows the Trustee to make distributions of principal to Anna Lee Anderson, provided income

from all other sources (including the Marital Trust) are insufficient for her care, comfort, support and maintenance.

20. The Family Trust provides for the distribution of the balance of the Family Trust assets after Anna Lee Anderson's death.

21. On or about May 8, 1980, Defendant Ralph Pahnke prepared a letter on the letterhead of Defendant Dean Witter Reynolds, Inc. which provided for the distribution of 41,000 shares of the common stock of Levi Straus & Co. as follows:

a. 24,118 shares were distributed to the personal securities account at Dean Witter Reynolds, Inc. of James N. Anderson;

b. 16,882 shares were distributed to the Anna Lee Anderson Trust Account at Dean Witter Reynolds, Inc.

22. The value of the Levi Straus & Co. stock distributed to James N. Anderson amounted to \$871,238.63.

23. The value of the Levi Straus & Co. stock distributed to the Anna Lee Anderson Trust amounted to \$609,845.36.

24. Neither of the distributions were in accordance with the provisions, terms and conditions of the Norman Anderson Trust Agreement which was in the possession of Defendant Pahnke and Defendant Dean Witter Reynolds, Inc.

25. Subsequent to such distributions, Defendant Dean Witter Reynolds, Inc. continued to manage the Anna Lee Anderson Trust Account. During the terms of Dean Witter Reynolds, Inc.'s

management of such Trust Account, the Trust Account became valueless.

26. The distributions induced by and affected by Defendant Pahnke and Defendant Dean Witter Reynolds were unlawful, and in direct contravention of the provisions of the Norman Anderson Trust Agreement.

27. Defendant Pahnke and Defendant Dean Witter Reynolds, Inc. owed Anna Lee Anderson, the beneficiary of the Norman Anderson Trust and the Trustee of said Trust, a duty of inquiry and a duty of good faith dealing when effectuating transactions with the Trustee of such Trust.

28. In addition, Defendants Pahnke and Dean Witter Reynolds, Inc. were required by applicable law to not assist, induce, aid, abet, or in any other manner facilitate transactions that were in violation of the terms of the Trust Agreement.

29. The conduct of Defendants Pahnke and Dean Witter Reynolds, Inc. was malicious, and wholly without good cause or good faith.

30. As a direct and proximate result of the wrongful, illegal, negligent, and unconscionable acts of Defendants Pahnke and Dean Witter Reynolds, Inc., Plaintiff has been damaged in an amount to be proven at trial.

FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

31. Paragraphs 1 through 30 are realleged as if set out in full herein.

32. When Defendants Pahnke and Dean Witter Reynolds, Inc. accepted an account with the Norman Anderson Trust, they contracted with said Trust to comply with applicable rules and regulations of the New York Stock Exchange, the National Association of Securities Dealers, as well as Federal and State law.

33. In addition, Defendants Pahnke and Dean Witter Reynolds, Inc. contracted to manage the accounts with the highest standards of fair dealing.

34. The conduct of Defendants Pahnke and Dean Witter Reynolds, Inc. as hereinabove alleged constitutes a breach in violation of the contract existing between the Trust and Defendants Pahnke and Dean Witter Reynolds, Inc.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

SECOND CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH CONTRACT)

35. Paragraphs 1 through 30 are realleged as if set out in full herein.

36. The conduct of Defendants Pahnke and Dean Witter Reynolds, Inc. hereinabove alleged constitutes an unlawful and tortious interference with the contract rights of Plaintiff.

37. As a direct and proximate result of Defendants Pahnke and Dean Witter Reynolds, Inc.'s unlawful and tortious conduct, Plaintiff has been damaged in an amount to be proven at trial.

38. Defendants Pahnke and Dean Witter Reynolds, Inc.'s conduct was wholly without good cause or good faith.

39. Plaintiff is entitled to an award of punitive damages in an amount calculated to punish and deter.

40. Plaintiff is entitled to an award of reasonable attorney's fees in connection with the prosecution of this action.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

THIRD CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

41. Paragraphs 1 through 30 are realleged as if set out in full herein.

42. Defendants Pahnke and Dean Witter Reynolds, Inc. carefully reviewed the terms and conditions of the Norman Anderson Trust Agreement to the extent that such Trust Agreement was forwarded to the Dean Witter Reynolds trust department in San Francisco, California for scrutiny.

43. In accepting the Norman Anderson Trust and opening a securities account for said Trust, Defendants Pahnke and Dean Witter Reynolds became de facto trustees of the Norman Anderson Trust.

44. Defendants Pahnke and Dean Witter Reynolds, Inc. owed Plaintiff the degree of care and loyalty imposed upon trustees by applicable law.

45. Defendants Pahnke and Dean Witter Reynolds, Inc. breached and violated their fiduciary duty to Plaintiff in undertaking the wrongful conduct as hereinabove alleged.

46. As a direct and proximate result of Defendants Pahnke and Dean Witter Reynolds, Inc.'s breach of fiduciary duty, Plaintiff has been damaged in an amount to be proven at trial.

47. Plaintiff is entitled to an award of punitive damages in an amount calculated to punish and deter.

48. Plaintiff is entitled to an award of reasonable attorney's fees incurred in connection with the prosecution of this action.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

FOURTH CAUSE OF ACTION
(NEGLIGENCE)

49. Paragraphs 1 through 30 are realleged as if set out in full herein.

50. Defendants Pahnke and Dean Witter Reynolds, Inc. owed Plaintiff a duty to not induce or facilitate the violation of any provision of the terms and conditions of the Norman Anderson Trust Agreement.

51. Defendants Pahnke and Dean Witter Reynolds, Inc. breached and violated their duty to Plaintiff as hereinabove alleged.

52. As a direct and proximate result of the careless, negligent, reckless, and unlawful acts and omissions of Defendants Pahnke and Dean Witter Reynolds, Inc., Plaintiff has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendants as more particularly hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants Pahnke and Dean Witter Reynolds, Inc., jointly and severally, as follows:

A. On Plaintiff's First Cause of Action for breach of contract, as follows:

(i) For damages in an amount to be proven at trial;

(ii) For costs of Court incurred herein; and

(iii) For such other and further relief as the Court deems just and proper in the premises.

B. On Plaintiff's Second Cause of Action for tortious interference with contract, as follows:

(i) For damages in an amount to be proven at trial;

(ii) For punitive damages in an amount calculated to punish and deter;

(iii) For costs of Court incurred herein including reasonable attorney's fees;

(iv) For such other and further relief as the Court deems just and proper in the premises.

C. On Plaintiff's Third Cause of Action for breach of fiduciary duty, as follows:

(i) For damages in an amount to be proven at trial;

(ii) For punitive damages in an amount calculated to punish and deter;

(iii) For costs of Court incurred herein including reasonable attorney's fees;

(iv) For such other and further relief as the Court deems just and proper in the premises.

D. On Plaintiff's Fourth Cause of Action for negligence, as follows:

(i) For damages in an amount to be proven at trial;

(ii) For costs of Court incurred herein; and

(iii) For such other and further relief as the Court deems just and proper in the premises.

DATED this 19th day of July, 1991.

THOMPSON, HATCH, MORTON & SKEEN

By JEMorton
James E. Morton
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff, by and through his counsel of record,
Thompson, Hatch, Morton & Skeen, hereby demands a trial by jury in
this matter.

DATED this 19th day of July, 1991.

THOMPSON, HATCH, MORTON & SKEEN

By JEMorton
James E. Morton
Attorneys for Plaintiff

Plaintiff's Address:

20013 N.E. 42nd St.
Redmond, Washington 98053

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing FIRST AMENDED COMPLAINT (JURY DEMANDED) was mailed, postage prepaid, to Mr. Joseph J. Palmer, Mr. Reid E. Lewis, Moyle & Draper, Attorneys for Defendants, 600 Deseret Plaza, No. 15 East First South, Salt Lake City, Utah 84111, this 19th day of July, 1991.

Ruth Walters

TRUST AGREEMENT

THIS TRUST AGREEMENT is made this 16th day of NOVEMBER, 1978, between NORMAN ANDERSON of Salt Lake City, Utah, hereinafter sometimes called the "Trustor" and JAMES N. ANDERSON, of Park City, Utah, hereinafter sometimes called the "Trustee".

Trustor does hereby transfer to the Trustee the property listed on Schedule "A" and the Trustee agrees to hold such property and any other property added to this Trust on the terms and conditions stated herein. Trustor or any other person or persons may add such other property to the trust property as may be acceptable to the Trustee by either inter vivos or testamentary transfer; and such additional property when delivered to the Trustee shall become a part of the Trust and be held by the Trustee on the terms and conditions stated herein.

ARTICLE I

DESIGNATION AND PURPOSE OF TRUST

1.1 Designation. This Trust may be designated the NORMAN ANDERSON TRUST.

1.2 Purpose. This Trust is established for the primary benefit of Trustor during Trustor's lifetime and of Trustor's family. Trustor's family consists of Trustor's wife, Anna Lee Anderson, and Trustor's son, James N. Anderson.

EXHIBIT "A"

ARTICLE II

DISPOSITION OF INCOME AND PRINCIPAL
DURING THE LIFETIME OF TRUSTOR

During the lifetime of the Trustor, such part or all of the income and/or principal of the trust estate shall be paid or delivered to such persons and in such amounts from time to time as the Trustor shall direct in writing signed by Trustor and delivered to Trustee; or in the absence of such direction, the Trustee shall pay or apply for the benefit of a class consisting of Trustor and Trustor's wife or any member of such class, such amounts to such persons as in his sole and absolute discretion he deems necessary and proper for the health, support, maintenance and welfare of Trustor and said wife.

ARTICLE III

DISPOSITION OF INCOME AND PRINCIPAL
UPON DEATH OF TRUSTOR

3.1 Settlement of Debts and Expenses. Upon the death of the Trustor, the Trustee may, in th sole and absolute discretion of the Trustee, pay from the Trust or advance such sums to the estate or personal representative of Trustor, with or without interest, as may be necessary for the settlement of Trustor's estate, such amounts as expenses of his last illness, funeral and burial, debts of the Trustor, inheritance taxes, estate taxes and other

taxes imposed by the state or federal government, and any and all expenses of administration of Trustor's estate. Provided, however, that the foregoing may not be satisfied from the proceeds (i) of any life insurance policy on the life of Trustor, or (ii) of any death benefit payable by reason of the Trustor having been a participant in an employee benefit plan if such proceeds are not included in the Trustor's gross estate for federal estate tax purposes.

3.2 Trustor's Family. Upon the death of Trustor, the Trustee may make the payments provided in Section 3.1, if any, or make adequate provision therefor, and shall divide and distribute the trust estate then remaining, including income, as follows:

3.2.1 Wife Not Surviving. If Trustor's wife does not survive Trustor (and it is hereby directed that for purposes of this Trust if Trustor and Trustor's wife shall die under circumstances that it is difficult or impossible to determine who died first, Trustor's wife shall be presumed to have survived Trustor), the Trustee shall hold, administer and distribute the trust estate, including all assets distributable to the Trust by reason of the death of Trustor, in one Trust, to be called the "Family Trust" to be administered as provided in 3.4.

3.2.2 Wife Surviving. If Trustor's wife does survive Trustor, the Trustee shall divide the trust estate, including all assets distributable to the Trust by reason of the death of Trustor, into two separate trusts, the first to be called the "Marital Trust" and the second the "Family Trust" to be administered as provided in 3.3 and 3.4.

A. Marital Trust Allocation. There shall be placed in the Marital Trust that portion of the trust estate which is equal in value, as finally determined for federal estate tax purposes, to the amount which is equal to the lesser of

(1) The maximum allowable marital deduction under federal estate tax laws or

(2) The minimum amount which, after allowing for any unified credit which has not been allowed during Trustor's lifetime, and any other deductions, exemptions or credits which will result in no federal estate tax being imposed on Trustor's estate.

and which is reduced by the value of any property or any interests in property as finally determined for federal estate tax purposes which passes

or has passed from Trustor to Trustor's wife, other than through the Marital Trust, by reason of said wife being a surviving joint tenant, or an insurance beneficiary, inchoate dower or any statutory interest similar thereto, by operation of law, or otherwise. However, there shall not be allocated to the Marital Trust, any property or interest in property or the proceeds of any property or assets which do not qualify for the marital deduction for federal estate tax purposes; nor shall there be allocated to the Marital Trust except when other assets are insufficient to satisfy such fractional share, any property or interest in property or the proceeds of any property or assets (i) with respect to which any tax credit or deduction shall be available because it is subject to both federal estate and federal income tax; or (ii) with respect to which any estate or death taxes are paid to any foreign country or any of its possessions or subdivisions. The Marital Trust shall not be reduced for any inheritance or estate taxes, payable as a result of the death of Trustor. The Trustee must allocate to the Marital Trust property or assets, including cash, fairly representative

of the appreciation or depreciation in the value of all property available for distribution to such Trust.

B. Family Trust Allocation. There shall be placed in the Family Trust that portion of the trust estate not allocated to the Marital Trust.

3.3 Marital Trust. The estate and property of the Marital Trust shall be held, administered and distributed by the Trustee for the purposes and upon the uses and trusts as follows:

3.3.1 Distribution During Lifetime of Wife.

During the lifetime of Trustor's wife after Trustor's death:

A. The Trustee shall pay to the Trustor's wife, commencing as of the date of Trustor's death, all of the income from the Trust in monthly or other convenient installments, but in no event less frequently than in quarter-annual installments; and

B. Whenever the Trustee determines that the funds available to Trustor's wife from all sources, including the income from the Marital Trust, are not sufficient for the proper care, maintenance, support and travel, including but not limited to the needs arising from illness, accident or misfortune of

Trustor's wife and family, and for funds to enable the purchase of residences, the Trustee, at any time and from time to time, may in his sole discretion pay or distribute to Trustor's wife so much of the principal of the Trust as he shall deem necessary or advisable under the circumstances.

C. The Trustee shall pay out of principal of the Marital Trust such amount or amounts, up to the full amount thereof, as Trustor's wife shall from time to time designate in writing delivered to Trustee to any person or persons, including Trustor's wife.

3.3.2 Distributions on Death of Wife. Upon the death of Trustor's wife, the Trustee shall pay over, deliver and distribute all of the rest, residue and remainder of the Trust to such persons and parties, including the estate of Trustor's wife, as Trustor's wife shall direct or appoint by provision of the last will of said wife specifically referring to this power of appointment; to the extent this general power of appointment is not exercised, then upon the death of Trustor's wife the Trustee shall continue to hold, administer and distribute the remainder of the Marital Trust as shall not have been appointed by Trustor's

wife, subject to and under the provisions of 3.4.

3.4 Family Trust. The estate and property of the Family Trust shall be held, administered and distributed by the Trustee for the purposes and upon the uses and trusts as follows:

3.4.1 Distributions During Lifetime of wife. During the lifetime of Trustor's wife after Trustor's death, whenever the Trustee determines that the funds available to Trustor's wife from all sources, including the income and principal from the Marital Trust are not sufficient for the proper care, maintenance, support and travel, including but not limited to the needs arising from illness, accident or misfortune of Trustor's wife, and for funds to enable the purchase of residences, the Trustee, at any time and from time to time, may in his sole discretion pay or distribute to Trustor's wife so much of the income and/or principal of the Trust as he shall deem necessary or advisable under the circumstances.

3.4.2 Distribution on Death of Wife. Upon the death of Trustor's wife, if Trustor's wife survives Trustor; the Trustee shall distribute the remainder of the Family Trust to or for the benefit of a class or any member or members thereof consisting of Trustor's son, the descendants of Trustor's son, including any of such descendants now living

or hereafter born, the spouses of Trustor's son and the spouses of the descendants of Trustor's son (including surviving spouses of Trustor's deceased son and his descendants) as Trustor's wife shall direct or appoint by provision of the last will of said wife specifically referring to this special power of appointment; to the extent this special power of appointment is not exercised, then upon the death of Trustor's wife, the Trustee shall distribute the remainder of the Family Trust as shall not have been appointed by Trustor's wife to Trustor's son, James N. Anderson, if he is then living, but if he is not then living to Trustor's son's then living descendants, upon the principle of representation, subject to the provisions of 3.5. If none of the descendants of Trustor are then living, the Trustee shall distribute the entire trust estate to the heirs at law of Trustor as determined pursuant to the laws of descent and distribution of the State of Utah in effect at such time as if Trustor had died at such time.

3.4.3 Distribution on Death of Trustor.

Upon Trustor's death if Trustor's wife does not survive Trustor, the Trustee shall distribute the Family Trust to Trustor's son, James N. Anderson, if he is then living but if he is not then living to Trustor's son's then living descendants upon the principle of representation, subject to the provisions

of 3.5. If none of the descendants of Trustor are then living, the Trustee shall distribute the entire trust estate to the heirs at law of Trustor as determined pursuant to the laws of descent and distribution of the State of Utah in effect at such time as if Trustor had died at such time.

3.5 Minor Beneficiaries Trust. If under any provision of this Trust any beneficiary becomes entitled to final distribution of any share or portion of the trust estate and such beneficiary is not of the age of 21 years, the share of such beneficiary shall be retained by the Trustee, until such beneficiary attains the age of 21 years, paying out such portion of the income and principal thereof as the Trustee in its sole discretion deems necessary or advisable to provide for the care, comfort, support, maintenance and education of such beneficiary and distributing any undistributed portion of such share or portion of a share to such beneficiary when he or she attains the age of 21 years, or to his or her estate if he or she should die before attaining the age of 21 years.

ARTICLE IV

AMENDMENT OR REVOCATION

4.1 During Lifetime of Trustor. The Trustor reserves the right at any time or times to amend or revoke this instrument and the trusts hereunder, in whole or in part, by an instrument or instruments in writing signed

by Trustor and delivered in Trustor's lifetime to the Trustee. If this instrument is revoked in its entirety, the revocation shall take effect upon the delivery of the required writing to the Trustee. On the revocation of this instrument in its entirety, the Trustee shall deliver to the Trustor, or as Trustor may direct in the instrument of revocation, all of the trust property.

4.2 By Will of Trustor. The Trustor reserves the right to amend or revoke this instrument and the trusts hereunder, in whole or in part, by his last will which specifically refers to this instrument and specifically directs what amendments are to be made or states that the instrument is revoked. If this instrument is revoked in its entirety by the last will of the Trustor, the Trustee shall deliver to the Trustor's estate, or as Trustor's will may direct, all of the trust property.

4.3 Acceptance by Trustee. If this Trust or any provision thereof is amended, the amendment shall take effect only when accepted in writing by the Trustee. This Trust shall be irrevocable and unamendable during any period of incompetency of the Trustor and shall become irrevocable and unamendable upon the death of the Trustor or prior thereto if by amendment Trustor has relinquished all of Trustor's right to amend or revoke this instrument.

ARTICLE V

POWERS OF TRUSTEE

The Trustee shall have all of the powers as stated in Part 4 of Chapter 7 of the Utah Uniform Probate Code and entitled Uniform Trustee's Powers Provisions. In addition thereto and not by way of limitation, the Trustee shall have the power, to retain any asset originally or later contributed to the trust estate whether or not such asset be of a character permissible for investment by fiduciaries; to retain and purchase assets with a view to possible increase in value notwithstanding the amount or absence of income therefrom; to retain and purchase assets notwithstanding the lack of diversification of the trust assets; to retain, purchase, sell or exchange any and all stocks, bonds, notes or other securities or any variety of real or personal property, including stocks or interests in investments, mutual funds to make distributions of principal or income in kind; to enter into any transaction, including, but not limited by advancing funds, purchasing assets, selling assets (and paying, with or without arrangements for reimbursement, any sums necessary for the settlement of the estate of Trustor) with the Trustee or legal representative of any other trust or estate in which any beneficiary hereunder has any beneficial interest even though such Trustee or legal representative is also Trustee hereunder; and to commingle the funds and assets of any trust

estate hereunder with any other trust estate hereunder so long as proper records are kept of the assets allocated to any such trust.

ARTICLE VI

INSURANCE PROVISIONS

6.1 Power in the Trustor. The Trustor reserves the right by Trustor's own act alone, without the consent or approval of the Trustee, to sell, assign or hypothecate any policies of insurance made payable to the Trustee hereunder, to exercise any option or privilege granted by such policies, including, but without limiting the generality of the foregoing, the right to change the beneficiary of such policies, and to receive all payments, dividends, surrender values, benefits or privileges of any kind which may accrue on account of such policies during Trustor's lifetime. Furthermore, the Trustee agrees to deliver to the Trustor on Trustor's written request signed by Trustor and delivered to Trustee any of such policies deposited with the Trustee hereunder.

6.2 Duties of Trustee. The Trustee shall hold any policies of insurance which may be deposited with him, but without any obligation to pay premiums, assessments or other charges upon any of the policies or to otherwise preserve them or any of them as binding contracts of insurance. Upon the death of the insured or upon the maturity date of any policy assigned or payable

to the Trustee, the Trustee shall take such proceedings as in his judgment he shall deem necessary to collect all proceeds due on the policies and he may, if he so elects, exercise any settlement options available under the policies. The Trustee is authorized to compromise and adjust claims arising out of such insurance policies, upon such terms and conditions as the Trustee shall deem advisable, and to the extent necessary may maintain or defend any suit, provided, however, the Trustee shall be under no duty to maintain or enter into any litigation unless his expenses, including counsel fees and costs, have been advanced or guaranteed in an amount and in a manner reasonably satisfactory to the Trustee. The Trustee may repay any advances made by him or reimburse himself for any such fees and costs out of the principal or income of this Trust. The receipt of the Trustee to the insurer shall be a full discharge of the insurer and Trustee alone shall thereafter be required to see to the application of the proceeds.

ARTICLE VII

THE TRUSTEE

7.1 Accounting. With respect to each separate trust created herein, the Trustee shall render annually an account of income and principal, including a statement of all receipts, disbursements and capital changes, to all beneficiaries then eligible to receive income or to the natural or legal guardians of such beneficiaries, upon, but only upon the request of any such beneficiary.

7.2 Bond. No bond shall be required of the original Trustee hereunder or of any successor trustee or, if bond is required by law, no surety on such bond shall be required.

7.3 Compensation. The Trustee shall be entitled to a reasonable fee for his services commensurate with fees charged by corporate trustees in Salt Lake City, Utah for similar services. The Trustee may charge a reasonable fee for transfers to a successor trustee and for any final distribution of any share of the trust estate based upon the work involved in such transfer or final distribution.

7.4 Resignation. The Trustee may resign at any time by giving thirty (30) days written notice to Trustor, or, after the death of the Trustor, to Trustor's wife. Upon such notice, Trustor, or after the death of Trustor, Trustor's wife may appoint a successor trustee. If no such appointment is made within thirty (30) days after the Trustee gives its notice of resignation, then the District Court of Salt Lake County or any judge thereof may appoint a successor trustee upon application of the resigning Trustee or of any other interested party.

7.5 Removal. The Trustee may be removed by the Trustor or after the death of the Trustor, by Trustor's wife by giving thirty (30) days written notice signed by Trustor, or Trustor's wife, as the case may be and

delivered to Trustee, in which the successor trustee is designated to the then acting Trustee.

7.6 Successor Trustee. A successor trustee may be either a corporation authorized under applicable law to act as trustee or an individual. Any such successor trustee shall act as Trustee hereunder without the execution or filing of any writing or any further action on the part of Trustor or of his wife or of any beneficiary hereunder. Upon the appointment of a successor trustee, the former Trustee shall promptly make an accounting and distribute all assets of the trust estate to the successor trustee. An additional or successor trustee shall not be liable for any action taken by the Trustee prior to the time such additional or successor trustee becomes a trustee.

ARTICLE VIII

MISCELLANEOUS

8.1 Powers of Appointment. The power of the donee over any power of appointment granted in this agreement shall include all lawful exercises thereof, without limitation, specifically including but not limited to, the power to make appointments outright to, or to a trustee to hold in trust for the exclusive benefit of, any one or more of the object of the power; to create life estates and other limited estates; to create general and special powers of appointment and to appoint subject to lawful spendthrift restrictions and other lawful conditions, provided that no one other than an object of the power is benefited thereby.

8.2 Spendthrift Clause. The interest of each beneficiary in the income or principal of any trust created hereunder shall be free from the control or interference of any creditor of a beneficiary or of any spouse of a married beneficiary and shall not be subject to attachment or susceptible of anticipation or alienation. Nothing contained in this paragraph 8.2 shall be construed as restricting in any way the exercise of any power or discretion granted hereunder.

8.3 Definitions. References herein to "child" or "children" refer only to the child designated in Article I. References herein to "descendant" or "descendants" shall mean lawful blood descendants in the first, second or other degree of the ancestor designated and, in all such cases, (a) an adopted child and such adopted child's lawful blood descendants shall be considered as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents, and (b) a child in gestation which is later born alive shall be regarded as a child in being during the period of gestation.

8.4 Governing Law. This agreement has been accepted by the Trustee in the State of Utah and all questions concerning its construction shall be governed by the laws of that state. All questions concerning the administration of the Trust shall be governed by the laws

of the jurisdiction in which the principal office of the Trustee (from time to time acting) is located.

8.5 Invalid Provisions. If any provision of this Trust is held to be invalid, none of the other provisions shall thereby be rendered invalid or inoperative, but such provisions shall be given full force and effect as herein provided. If any provisions of this trust instrument violate the rules against perpetuities now or hereafter in effect, in the state within which this Trust is being administered, that portion of the trust or trusts so affected shall be administered as herein provided until the termination of the maximum period authorized by law, at which time and forthwith such part of the said trust estate so affected shall be distributed in fee simple to the beneficiary or beneficiaries in the proportions in which they are then entitled to enjoy the benefits so terminated. For purposes of computing such time rules, the lives in being shall be those of the Trustor, Trustor's wife and their descendants living at the time the trust or trusts herein established become irrevocable.

8.6 Residence Property. If any residence of Trustor or Trustor's wife is or becomes a part of any trust estate created hereunder, the Trustee is authorized and directed to allow Trustor and Trustor's wife, or either of them, to use and occupy any such residence without payment of rent therefor for so long as Trustor and Trustor's wife, or either of them, continue to so occupy such residence or

residences. During such occupancy, Trustor hereby authorizes but does not direct Trustee, to pay, in his discretion, from the income or principal of the trust estate which holds an interest in any such residence, any taxes, assessments, fire and casualty and liability insurance premiums, maintenance costs, ordinary repairs and replacements and reasonable improvements for any such residence. With the written consent of Trustor, or after Trustor's death, Trustor's wife, signed by Trustor or Trustor's wife, as the case may be, and delivered to Trustee, the Trustee may sell such residence. If requested in such writing the proceeds of the sale (together with any additional assets of the trust estate) shall be used by the Trustee to purchase, acquire, or build a substitute residence, taking title in the name of the Trustee and allowing Trustor and Trustor's wife, or either of them, to occupy such residence on the terms previously set out in this paragraph. If a substitute residence is not requested in such writing, the proceeds of the sale of any such residence shall be held, administered and distributed by the Trustee pursuant to the terms of the Trust estate involved without regard to this paragraph.


8.7 Trustee May Rely on Wills - Presumption

In ascertaining whether there has been an amendment of this Trust by the last will of the Trustor or whether there has been an exercise of any powers which have been granted to

any beneficiary herein and which may be exercised by any such beneficiary's last will, the Trustee shall be protected in relying upon an instrument admitted to probate in any jurisdiction as the last will of the Trustor or as the last will of any beneficiary who has such a power. Unless the Trustee has actual notice of the admission to probate of such a will within 6 months after the death of Trustor or any such beneficiary, it will be conclusively presumed that no such will has been admitted to probate, that no such will exists and that the Trustor or beneficiary, as the case may be, died intestate and the trust estate shall be administered accordingly whether or not such a will is thereafter found to exist.

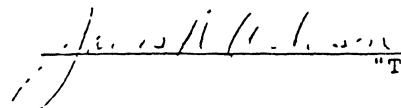
IN WITNESS WHEREOF, this instrument has been signed as of the day and year first above written.

NORMAN ANDERSON



"Trustor"

JAMES N. ANDERSON



"Trustee"

JAMES E. MORTON, A3739
RONALD C. WOLTHUIS, #4699
THOMPSON, HATCH, MORTON & SKEEN
Attorney for Plaintiff/Appellant
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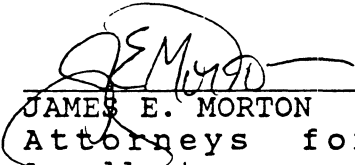
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ANNA LEE ANDERSON,)	
	)	NOTICE OF APPEAL
Plaintiff/Appellant)	
vs.	)	Trial Court No. 900907186CN
)	
DEAN WITTER REYNOLDS, INC.,)	
a Foreign Corporation, RALPH)	
PAHNKE, and JOHN DOES 1)	
through 25,)	
	)	Judge J. Dennis Frederick
Defendant/Appellee.)	

Notice is hereby given that Plaintiff/Appellant, Anna Lee Anderson, through counsel James E. Morton of Thompson, Hatch, Morton & Skeen, hereby appeals to the Utah Supreme Court the final Orders of the Honorable J. Dennis Fredrick entered in this matter on September 16, 1991 and September 27, 1991. These Orders dismissed this action in its entirety from which, Plaintiff/Appellant hereby appeals.

DATED this 8th day of October, 1991.


THOMPSON, HATCH, MORTON & SKEEN



JAMES E. MORTON
Attorneys for Plaintiff
Appellant

CERTIFICATE OF SERVICE

The foregoing Notice of Appeal was mailed to Joseph J. Palmer, Reid E. Lewis at Moyle and Draper, 600 Deseret Plaza, #15 East 100 South, Salt Lake City, Utah 84111, on this 8th day of October, 1991.



SECRETARY